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By OGC-CELA at 8:23 am, Sep 22, 2021

DICKINSON WRIGHT PLLC

INTERNATIONAL SQUARE
1825 EYE STREET, NW, SUITE 900
WASHINGTON, DC 20006
TELEPHONE: 202-457-0160
FACSIMILE: 844-670-6009
http://www.dickinsonwright.com

CHARLIE SPIES
CSpies@dickinsonwright.com
202.466.5964

September 21, 2021

Federal Election Commission
Office of Complaint Examination
& Legal Administration
Attn: Roy Q. Luckett
1050 First Street NE
Washington, DC 20463

VIA EMAIL: cela@fec.gov.

Re: MUR 7912 Response for Lone Star Values PAC

We represent Lone Star Values PAC ("LSV") in this matter. The Complaint has a creative new theory alleging that the Respondent violated the Federal Election Campaign Act of 1971, as amended ("FECA") and Commission regulations by not reporting Congressional Leadership Fund ("CLF") as an affiliated committee on LSV's Statement of Organization filed with the Commission. There are several reasons why the Commission should dismiss this matter. First, FECA, Commission regulations, and prior precedent do not support the Complainant's assertion that LSV and CLF should be considered affiliated. Specifically, the regulations on affiliation have not been applied to Super PACs, and for good reason – these regulations are only relevant when there are shared contribution limits at issue, and with Super PACs, there are no limits to share. Second, even assuming *arguendo* that LSV and CLF could be treated as affiliated, there is no meaningful public disclosure information that has been withheld from the public and instead the alleged violation is *de minimis* (i.e. a box that Complainant asserts should have been checked) and should be dismissed under *Heckler v. Cheney*.

I. FACTUAL BACKGROUND AND LEGAL ANALYSIS

LSV is a Super PAC that was formed on February 9, 2018, and has been active in several election cycles. On February 24, 2020, roughly two years after LSV was created, LSV received a contribution from CLF, an independent expenditure only political committee, in the amount of $75,000. LSV later made independent expenditures in support of Wesley Hunt.

Based solely on the above facts, the Complainant alleges that LSV and CLF were affiliated committees, which the Complainant claims should have been reported on both committees' Statement of Organization. The Commission's affiliation regulations, however, are not – and should not be – applicable here.

Two organizations are generally considered *per se* "affiliated" when an organization is established, financed, maintained or controlled by another committee or sponsoring organization. However, if per se affiliation cannot be determined, the Commission will use a fact-specific analysis, applying ten affiliation factors, as outlined by Commission regulations, to the facts presented and concluding that two organizations are affiliated when there are more factors supporting affiliation than there are opposing affiliation.[1] If the Commission determines that two organizations are "affiliated," the Commission will treat the committees as a single committee for the purpose of the contribution limits, meaning that all contributions made or received by the affiliated committees share the same limits.[2] If two organizations are deemed "affiliated," and sharing contribution limits, then Commission regulations also allow each committee to receive unlimited transfers of permissible funds from the other committee.[3] Therefore, while affiliated committees are restricted in how much they can receive from outside donors, the committees are not restricted in how much money they can receive from one another.

When considering FECA, Commission regulations, and prior precedent, there are several reasons why the affiliation rules should not apply here. First, applying the affiliation regulations to CLF and LSV, and Super PACs generally, is contrary to the purpose of the affiliation regulations, which is preventing organizations from circumventing contribution limits by creating separate entities. Regardless of any affiliation status, LSV was always free to accept unlimited contributions from individuals, corporations, and other political entities, including CLF. Even if assuming LSV was "affiliated" with CLF, CLF could still make its $75,000 contribution to LSV, given that two affiliated organizations may receive unlimited transfers from one another. In a different context where the affiliation factors were applied to these facts, CLF's contribution to LSV may be one factor in favor of affiliation, but would not nearly be enough to make a legal determination that LSV and CLF are "affiliated."

Second, even assuming *arguendo* that CLF's contribution to LSV triggered the two organizations to be treated as affiliated under the Commission's affiliation regulations, there is no substantive legal violation. Affiliation status would have no additional impact on either organizations' disclosure obligations, and there are no contribution violations because of CLF's contribution to LSV. The only real issue would be that LSV would have to check a box on its Statement of Organization stating its affiliation with CLF. Given that the only implication of the organizations being legally considered "affiliated" is a box being checked, coupled with the omnipresent concern on how to effectively utilize the Commission's limited time and resources, [4]

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[1] For example, in Advisory Opinion 2017-03 (American Association of Clinical Urologists, Inc.), the Commission found that two organizations were not affiliated because seven of the ten above-listed factors weighed against affiliation. In contrast, in Advisory Opinion 2002-15 (UROPAC), the Commission found that two organizations were affiliated when six of the ten factors supported affiliation between the two organizations.

[2] 52 U.S.C. § 30116(a)(4)-(5); 11 C.F.R. § 110.3.

[3] 11 C.F.R. § 110.3(a)(1), (c)(1).

[4] Almost every Commissioner has acknowledged the Commission's high backlog and a need to prioritize more significant violations of FECA and Commission regulations. Statement of Reasons of Chair Shana Broussard and Commissioner Ellen Weintraub, MUR 7395 ("Under these circumstances, and *in light of the imminent statute of limitations and other priorities on the Commission's docket*, we voted to dismiss the allegations as a matter of prosecutorial discretion.") (emphasis added); Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean Cooksey and Trey Trainor, MUR 7265 (Donald J. Trump for President, Inc.) ("In this position, however, our agency's limited enforcement resources are better directed toward other investigations with better odds of success. Commission staff time and funds are especially precious in light of the significant backlog of enforcement cases that the Commission accrued while lacking a quorum.") (citing Statement of

the Commission should not waste its time on an extensive and time-consuming investigation on what is at worst a technicality.

This is yet again another example of this Complainant continuing to waste the Commission's scarce time and resources by filing speculative and frivolous complaints. It is especially unfortunate that the Complainant is using the enforcement process to attempt to create new rules and regulations, knowing very well that the enforcement division is not proper forum for such change.[5] When considering the law, the facts as provided by the Complainant, and prior precedent, it is clear that the affiliation regulations should not apply to LSV and CLF.[6] We respectfully request that the Commission find no reason to believe that LSV violated FECA and/or Commission regulations and close the file.

Sincerely,

Charlie Spies
Katie Reynolds
Counsel to Lone Star Values PAC

Commissioner Ellen L. Weintraub On the Senate's Votes to Restore the Federal Election Commission to Full Strength (Dec. 9, 2020))).

[5] Campaign Legal Center, *Dodging Disclosure: How Super PACs Used Reporting Loopholes and Digital Disclaimer Gaps to Keep Voters in the Dark in the 2018 Midterms* (Nov. 2018), https://campaignlegal.org/sites/default/files/2018-11/11-29-18%20Post-Election%20Report%20%281045%20am%29.pdf. In this report, CLC discussed the exact fact pattern at issue in this case. Notably, in the report, CLC never classified the activity as illegal, but rather called it "a new way to disguise [Super PAC] spending." *Id*. at 3. By filing this Complaint, the CLC is yet again using the enforcement process to push its policy goals. The enforcement process is not the proper vehicle to change the law. The Commission should make this sentiment clear, and should call on organizations to work through the rulemaking or legislative process to address policy concerns.

[6] If the Commission believes our interpretation of the affiliation rules to be incorrect, and believes that the regulations should apply to Super PACs, we would request that the Commission promulgate a rulemaking to make that interpretation clear.